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**DEPARTMENT OF HOMELAND SECURITY  
U.S. CUSTOMS AND BORDER PROTECTION**

**[Docket No. USCBP–2011–0025]**

**Final Determination Regarding Petition to Reconcile Inconsistent Customs Decisions  
Concerning the Tariff Classification of CN-9 Solution**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination regarding petition to reconcile inconsistent customs decisions.

**SUMMARY:** This document publishes a summary of a decision issued by U.S. Customs and Border Protection (“CBP”) in response to a petition filed pursuant to section 177.13 of the CBP regulations requesting the reconciliation of inconsistent classification decisions issued by CBP under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a certain CN-9 solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. In the decision, CBP informed the party filing the petition that the correct classification of the subject CN-9 Solution is under subheading 3102.60.00, HTSUS.

**DATES:** The final classification decision was issued on December 16, 2011. The classification set forth in the decision applies to all entries of the described CN-9 Solution for which liquidation was not finalized as of December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tamar Anolic, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325-0036.

**SUPPLEMENTARY INFORMATION:****Background****I. Petition**

A petition dated June 16, 2010<sup>1</sup> was filed under section 177.13 of the U.S. Customs and Border Regulations (“CBP”) regulations (19 CFR 177.13), on behalf of Yara North America, Inc. (“Yara”) requesting the reconciliation of inconsistent classification decisions under the Harmonized Tariff Schedule of the United States (“HTSUS”).

Yara is a subset of Yara International ASA, a global firm specializing in agricultural products and environmental protection agents. It is a supplier of mineral fertilizers. As an importer of these products, Yara received inconsistent classification decisions on its merchandise at different ports. The petition concerned Yara’s importation of CN-9 Solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. Yara entered the subject merchandise at the Port of Long Beach between January 24, 2009 and September 8, 2009, and at the Port of Baltimore on April 20, 2010, under subheading 3102.60.00, HTSUS, as “Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.” Citing Legal Note 2(a)(v) to Chapter 31, HTSUS,<sup>2</sup> the Port of Long Beach liquidated the subject merchandise as entered. Citing Legal Note 5 to Chapter 28, HTSUS,<sup>3</sup> the Port of Baltimore liquidated the subject merchandise under

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<sup>1</sup> The **Federal Register** (76 FR 48875) notice of August 9, 2011 erroneously listed the petition as being dated June 6, 2010.

<sup>2</sup> Legal Note 2(a)(v) to Chapter 31, HTSUS, provides that: “Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105: (a) Goods which answer to one or other of the descriptions given below:... (v) Double salts (whether or not pure) or mixtures of calcium nitrate and ammonium nitrate.”

<sup>3</sup> Legal Note 5 to Chapter 28, HTSUS, provides that: “Headings 2826 to 2842 apply only to metal or ammonium salts or peroxysalts. Except where the context otherwise requires, double or complex salts are to be classified in heading 2842.”

subheading 2842.90.90, HTSUS, as “Other salts of inorganic acids or peroxyacids (including aluminosilicates whether or not chemically defined), other than azides: Other: Other.”

Yara met the requirements as an interested party set forth in 19 CFR 177.13(a)(2) and 19 U.S.C. 1514(c) and met the requirements regarding the types of decisions subject to petition set forth in 19 CFR 177.13(a)(1) and 19 U.S.C. 1514(a). Furthermore, having filed the petition within 180 days of the latest decision it received from a port, Yara met the timeliness requirements of 19 CFR 177.13(a)(3). Lastly, Yara also met the requirements of 19 CFR 177.13(b)(2), and specifically 19 CFR 177.13(b)(2)(i) in that the petition contained a complete description of the inconsistent decisions of which they complained. The company submitted a sample that had been tested by the CBP laboratories. Yara requested that CBP classify the imported merchandise under subheading 3102.60.00, HTSUS.

Notice of the petition, along with a request for comments, was published in the **Federal Register** (76 FR 48875) on August 9, 2011. No comments were received in response to the notice. This document informs all interested parties of CBP’s decision regarding the issue raised in the petition.

## **II. Decision**

The subject merchandise is a hydrated ammonium calcium nitrate double salt that is used as a fertilizer. While it can also be used for water treatment, its primary use is as a fertilizer and its chemical structure is identical for both uses. As a result, it is described by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer.

Furthermore, Legal Note 2 to Chapter 31, HTSUS, specifically lists this merchandise: double salts, whether or not pure, or mixtures of calcium nitrate and ammonium nitrate. In

addition, Explanatory Note (EN) 31.02 confirms this interpretation. The subject merchandise is a fertilizer with a secondary use in waste water treatment. This alternate function is explicitly allowed by EN 31.02.

The Port of Baltimore liquidated the subject merchandise under heading 2842, HTSUS. Legal Note 5 to Chapter 28, HTSUS, directs classification of double or complex salts into heading 2842, HTSUS, “except where the context otherwise requires.” There is no dispute that the subject merchandise is a double salt, but the context here requires that it be classified outside heading 2842, HTSUS. In this case, the subject merchandise is specifically described by Legal Note 2 to heading 3102, HTSUS, as being classified in that heading. The subject merchandise is also described, *eo nomine*, by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer. As a result, the context requires that it be classified there instead of heading 2842, HTSUS.

This notice informs all interested parties that in a decision dated December 16, 2011, CBP classified the subject CN-9 Solution under subheading 3102.60.00, HTSUS, which provides for: “Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.” In accordance with 19 CFR 177.13(e), the decision was effective immediately upon issuance and, where applicable, applies to all entries for which liquidation is not final.

**III. Authority**

This notice is published in accordance with section 177.13(d), CBP Regulations (19 CFR 177.13(d)).

Dated: December 27, 2011

Sandra L. Bell  
Executive Director, Regulations and Rulings  
Office of International Trade

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